

REMARKS

Claims 1, 3-7, 9 and 14 are pending in the Application and are now presented for examination. Claims 1, 9 and 14 have been amended. Claims 2, 10-12 and 15-17 have been cancelled without prejudice and without disclaimer of subject matter. No new matter has been added. Claims 1, 9 and 14 are independent.

Applicant respectfully requests that this Amendment be entered to put the case in better condition for appeal. Applicant wishes to point out that the Final Office Action cited two previously uncited references, U.S. Patent No. 6,111,517, issued to Atick (hereinafter "Atick") and U.S. Patent No. 4,812,872, issued to Desormeaux (hereinafter "Desormeaux"). In accordance with section 706.07 of the Manual of Patent Examining Procedure (MPEP), "[w]hile the rules no longer give to an applicant the right to 'amend as often as the examiner presents new references or reasons for rejection,' present practice does not sanction hasty and ill-considered final rejections. The applicant who is seeking to define his or her invention in claims that will give him or her the patent protection to which he or she is justly entitled should receive the cooperation of the examiner to that end, and not be prematurely cut off in the prosecution of his or her application." Applicant respectfully requests the opportunity to address the newly presented references.

Claim Rejections under 35 U.S.C. § 112

On page 2 of the Office Action, Claims 1-7, 10-12, and 14-17 are rejected under 35 U.S.C. § 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. In particular, the Office Action objects to the use of the term "proximate." As an initial matter, Claims 2, 10-12

and 15-17 have been cancelled, thereby rendering the rejections of these claims moot. Applicant wishes to point out that, contrary to the assertion in the Office Action, the term “proximate” does not appear in Claims 1 and 3-7. Accordingly, Applicant respectfully requests that this rejection be withdrawn.

Claim Rejections under 35 U.S.C. § 103(a)

Independent Claims 1 and 14

On page 4 of the Office Action, Claims 1-3 and 14-17 are rejected under 35 U.S.C. §103(a) as being unpatentable over Atick in view of Desormeaux. As an initial matter, Claims 2 and 15-17 have been cancelled, thereby rendering the rejection of these claims moot.

Independent Claim 1 has been amended to include the feature of “a light source controller configured to **provide a substantially continuously variable** control of an illumination level of said visible light source in response to ambient light on a human face to **adjust contrast** on said human face to capture a light-corrected image thereof” (emphasis added). Neither Atick nor Desormeaux, standing alone or in combination, teach, disclose or suggest the feature of providing a **substantially continuously variable control** of the illumination level of a visible light source or adjusting the contrast on a human face. Independent Claim 14 has been amended in a similar manner.

The Office Action characterizes Atick as disclosing an object recognition system comprising a camera and a computer configured to compare data representative of said image to stored image data. The Office Action relies upon Desormeaux to teach a visible light source and a light source controller configured to control an illumination level of said visible light to

achieve contrast on a human face. However, the light source controller of Desormeaux does not provide a substantially continuously variable control of the illumination level of the light source. In fact, Desormeaux does not disclose controlling an illumination level at all—instead, Desormeaux discloses controlling an exposure time to the same illumination.

The light source controller of Desormeaux has three discrete modes of operation: “full flash, no flash and fill flash.” *See* Desormeaux, Abstract, FIG. 4 and column 3, lines 7-10. These discrete operating modes provide different time intervals for the camera shutter to be exposed to the light source. Obviously, at the “no flash” level, the light source is off. At the full flash level, a control signal instructs the diaphragm shutter to open at a first time, T_0 , beginning the exposure interval. *Id.* at column 3, lines 61-65. Then, a flash triggering circuit energizes an electronic flash device to discharge at a second time, T_2 , outputting a burst of light represented as a full flash “spike” 31 in FIG. 5. *See* Desormeaux, column 4, lines 5-13. A second control signal closes the diaphragm shutter after expiration of an exposure timer interval limit, wherein the exposure interval for the full flash exposure is shown in FIG. 5 as the area under the largest curve 33. *Id.* at column 4, lines 14-20. The actual flash output, i.e., illumination level, of the “fill flash level” is exactly the same as that of the “full flash level.” “Note that the fill flash output 35 and the full flash output 31 in FIG. 5 are **identical**; that is, they have the same peak intensity and the same duration. The only difference between the two flash outputs is the time of introduction, T_1 or T_2 .” *Id.* at column 4, lines 48-53 (emphasis added). Thus, Desormeaux does not teach controlling the illumination level of the light source to adjust contrast, but only teaches adjusting the exposure interval of the shutter.

In contrast, the present invention teaches providing a substantially continuously variable control of the illumination level of the light source, as recited in amended Claims 1 and 14. For example, one way in which the present invention may control the illumination level of the light source is by varying the amount of current through the light source. *See* Application, page 5, lines 12-13, and page 6, lines 17-19). Therefore, because Desormeaux does not teach, anticipate, or suggest each and every element of amended Claims 1 and 14, either standing alone or in combination with Atick, Applicant believes Claims 1 and 14, as amended, are sufficient to overcome the rejection under 35 U.S.C. § 103(a). The withdrawal of this rejection is earnestly solicited.

Dependent Claim 3

Claim 3 is directly dependent from independent Claim 1 discussed above. This claim recites additional limitations which, in conformity with the features of their corresponding independent claim, are not disclosed or suggested by the art of record. The dependent claim is therefore believed patentable. However, the individual reconsideration of the patentability of Claim 3 on its own merits is respectfully requested.

Dependent Claims 4-7

On page 6 of the Office Action, Claims 4-7 are rejected under 35 U.S.C. §103(a) as being unpatentable over Atick, in view of Desormeaux as applied to Claim 3, and further in view of U.S. Patent No. 2,913,636 to Morrow (hereinafter “Morrow”). Claims 4-7 are each dependent

either directly or indirectly from independent Claim 1. These claims recite additional limitations which, in conformity with the features of Claim 1, are not disclosed or suggested by the art of record. The dependent claims are therefore believed patentable. However, the individual reconsideration of the patentability of each claim on its own merits is respectfully requested.

Independent Claim 9

On page 8 of the Office Action, Claims 9-12 are rejected under 35 U.S.C. §103(a) as being unpatentable over Atick, in view of Desormaux. Claims 10-12 have been cancelled, thereby rendering the rejection of these claims moot.

Independent Claim 9 has been amended in a similar manner as Independent Claim 1, discussed above. Specifically, Claim 9 has been amended to recite the feature of “providing a substantially continuously variable control of an illumination level of a visible light source” (emphasis added). Therefore, the arguments presented in relation to Claim 1 apply equally to Claim 9. As neither Atick nor Desormaux, either standing alone or in combination, recite each and every feature of Claim 9, as amended, Applicant believes Claim 9 is in condition for allowance and respectfully requested the withdrawal of this rejection.

For all of the above reasons, the claim objections are believed to have been overcome placing Claims 1, 3-7, 9 and 14 in condition for allowance, and reconsideration and allowance thereof is respectfully requested.

The Examiner is encouraged to telephone the undersigned to discuss any matter that would expedite allowance of the present application. The Commissioner is hereby authorized to credit overpayments or charge payment of any additional fees associated with this communication to Deposit Account No. 502104.

Respectfully submitted,

Date: May 21, 2008

By: **/Alan M. Weisberg/**
Alan M. Weisberg
Reg. No.: 43,982
Attorney for Applicant(s)
Christopher & Weisberg, P.A.
200 East Las Olas Boulevard, Suite 2040
Fort Lauderdale, Florida 33301
Customer No. 70757
Tel: (954) 828-1488
Fax: (954) 828-9122
email: ptomail@cwiplaw.com

108286